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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **COMPANY APPEAL (SB) No. 48/2010**

Date of decision: 18th November, 2010

RAM BADAN

..... Appellant

Through Mr. Prabhjit Jauhar, Advocate.

versus

OFFICIAL LIQUIDATOR

..... Respondent

Through Mr. Rajiv Behl, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER (ORAL)

1. The appellant impugns order dated 26th May, 2006 passed by the Official Liquidator partly rejecting the claim of the appellant and directing payment of Rs.1,54,630/- towards back wages. The Official Liquidator has held that the total salary payable to the appellant upto September, 1988 was Rs.3,20,687.50 and 44.57% of the said amount amounting to Rs.1,54,630/- is payable.

2. The two contentions have been raised in the present appeal. The appellant was appointed as Rotary Operator with effect from 22nd November, 1985 but his services were terminated with effect from 4th August, 1988. By award dated 7th October, 1998, Labour Court, Faridabad has held that termination of the appellant was illegal and the same was set aside and it was directed that the appellant will be paid full back wages. Accordingly, full back wages are payable and the Official Liquidator has wrongly restricted payment to Rs.1,54,630/-. Secondly, it is submitted that the order dated 30th March, 2006 records that the ex-management had agreed to pay shortfall, if any, in respect of workers

and, therefore, full payment should be made.

3. It is not possible to accept both the contentions. By order dated 27th September, 2005 passed in Company Petition No. 125/2000 and Company Application Nos. 884 and 1173/2005 it was directed that the workers will be paid salary upto September, 1998 and not thereafter. This order was passed after noticing the provisions of the Industrial Disputes Act, 1947 and the fact that the factory had closed down on 8th February, 1998. The said order was passed in the presence of Mr. P. Jauhar, Advocate, who is also the counsel for the appellant herein. The effect of the award dated 7th October, 1998 is that the appellant continued as a worker in spite of illegal termination with effect from 4th August, 1988. He would be accordingly entitled to wages upto September, 1998 but not thereafter. The appellant is not on a better footing or in a better position than other workers, who had in fact worked and had stopped working after the factory had closed down in February, 1998. The Official Liquidator has accordingly rightly calculated and computed the wages payable to the appellant upto September, 1998 and not thereafter. The said amount has been quantified as Rs.3,20,687.50. About this figure, there is no dispute and challenge.

4. Order dated 27th September, 2005 also computes the total claim due and payable under Section 529 and 529A of the Companies Act, 1956, in view of the claims of the secured creditors in proportion to the claim of the workers. Accordingly, it was directed that dividend of 44.57% out of the total claim would be distributed to the workers. By the impugned order dated 26th May, 2006 the appellant has been paid dividend at the rate of 44.57% on Rs.3,20,687.50, which works out to Rs.1,54,630/-. This payment is accordingly in accord with the order dated 27th September, 2005. The appellant cannot be paid higher dividend than what was stipulated in the order dated 27th September, 2005 as payment of higher dividend will necessarily mean that the

amount payable to the secured creditors or to the co- workers has to be reduced. This would be in breach of Section 529 and 529A of the Companies Act, 1956.

5. Regarding the second contention, the order dated 30th March, 2006 has not been attached to the appeal and has been produced by Mr. Rajiv Behl, Advocate for the Official Liquidator. By the said order dividend was directed to be paid to the secured creditors and workers at the rates stipulated in the earlier order dated 27th September, 2005. It was noticed that the total claim of the workers was Rs.3,89,85,001/- on which dividend of 44.57% was declared entailing payment of Rs.156.60 lacs to the workers. Order dated 30th March, 2006 notices that payment had already been made to 213 workers and the Official Liquidator was directed to make the balance payment to workers with effect from 3rd April, 2006 onwards. The said order notices that apart from 770 workers, whose claims had been accepted, some other workers had also filed claims. The Court was, therefore, conscious of the fact that the total claim of the workers even at the dividend rate of 44.57% may exceed the amount of Rs.156.60 lacs. In these circumstances, statement of Mr. K.C. Nanda, Advocate was recorded on behalf of the ex-Directors that the ex-Directors shall make payments in case of any shortfall. The exact observations in the order dated 30th April, 2006 are as under:

“.....As far as workers are concerned, 213 workers have already been paid. As far as remaining workers are concerned, the OL shall start making payment to them from 3rd April, 2006 and this process would go on day to day basis. There are certain other workers who have filed their claims apart from 770 workers. Mr. K.C. Nanda has undertaken on behalf of ex-directors that payment to them shall be made by ex-directors in case there is any shortfall. Therefore, those workers shall also be paid by the OL. In case there is any shortfall, the OL shall be entitled to call upon

the ex-directors to make up the deficiency in order to make payment to these workers.”

6. The effect of that order was that in case there was any shortfall and the workers could not be paid dividend @ 44.57% from the fund available with the Official Liquidator, the balance amount would be paid by the ex-management. This did not mean that the workers had to be paid 100% dividend and the shortfall between 44.56% and 100% had to be made up by the ex-management from their own pocket. Even the other co-workers have not interpreted the order dated 30th March, 2006 in this manner or raised any such claim.

The appeal is accordingly dismissed.

SANJIV KHANNA, J.

NOVEMBER 18, 2010
VKR